

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
OF THE STATE OF WASHINGTON

IN THE MATTER OF A HEARING
ON THE APPROVAL OF SURFACE
WATER APPLICATION NO. 20984

MARGARET M. NASBURG and
SARA CLAPP,

Appellants,

vs.

DEPARTMENT OF WATER RESOURCES,
STATE OF WASHINGTON,

Respondent.

HB 70-25

ORDER GRANTING SUMMARY
JUDGMENT ON APPLICATION
OF RESPONDENT, DEPARTMENT
OF ECOLOGY

Margaret M. Nasburg and Sara Clapp, by an appeal dated February 27, 1970, requested a hearing to review an order of the former Department of Water Resources, State of Washington (now the Department of Ecology). This order directed the issuance of a surface water permit to Edward J. McLeary pursuant to Surface Water Application No. 20984 to divert forty cubic feet per second of water from Rocky Ford Creek in Grant County for the operation of a fish hatchery.

On November 12, 1970, a stipulation signed by all parties was entered. Thereafter, appellants and respondent both moved for Summary Judgment on the basis of the stipulated facts.

There having been no objection to the facts set forth in the stipulation, the stipulation is therefore adopted by the Board as its findings of fact and is by this reference made a part hereof. Having considered the stipulated facts and briefs of counsel, the

Board hereby makes the following conclusions:

I.

The Department is required by the water code (RCW 90.03.290) to issue a surface water permit if the proposed use is a beneficial use, there is water available for appropriation, and the appropriation will not impair existing rights or be detrimental to the public welfare. These questions are only to be tentatively decided in the interest of the public, and the Department's decisions thereon do not constitute adjudications of the rights of others on the stream.

II.

The proposed use of water by the applicant for fish propagation purposes is a beneficial use.

III.

There is water available in Rocky Ford Creek in an amount sufficient for the applicant's proposed use, and there is no evidence that the proposed appropriation will impair the rights of others.

IV.

The Department of Water Resources was not required under the law existing at the time of its decision to consider the pollutional effects of the applicant's proposed use when ruling upon his application for the appropriation of surface waters.

V.

There is no basis in fact or law to reverse the decision of the Department of Water Resources that a surface water permit should be issued to Edward McLeary pursuant to Surface Water Application

No. 20984.

Based upon the foregoing, we deny the Appellants' Motion for Summary Judgment and grant the Respondent's Motion for Summary Judgment, and do, by these presents, affirm the action of the Department of Water Resources, State of Washington (now Department of Ecology), in issuing a permit to Edward McLeary on his Surface Water Application No. 20984.

DONE at Olympia, Washington this 10th day of May, 1971.

POLLUTION CONTROL HEARINGS BOARD

By

MATTHEW W. HILL, Chairman

Walt Woodward

WALT WOODWARD, Member

James T. Sheehy

JAMES T. SHEEHY, Member